

ANTHONY M. BLACK

DIRECT DIAL (202) 295-8320
AMBLACK@SWIDLAW.COM

THE WASHINGTON HARBOUR 3000 K
STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7643
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
(212) 973-0111 FAX (212) 891-9598

March 8, 2001

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VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554


Re: Comments of McLeodUSA Telecommunications Services, Inc. (CC Docket 98-141,
ASD 01-17)

Dear Ms. Salas:

Enclosed for filing in the above-referenced docket are an original and four (4) copies of McLeodUSA Telecommunications Services, Inc.'s ("McLeodUSA") Comments.

I would appreciate your date-stamping the enclosed extra copy of this filing and returning it to me in the enclosed envelope with the courier I have waiting.

Sincerely,


Anthony M. Black

AMB/kas
enclosure

cc: Service List (attached)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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MAR - 8 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In re Applications of)	
)	
AMERITECH CORP.,)	
Transferor,)	
)	
AND)	
)	
SBC COMMUNICATIONS, INC.,)	CC Docket No. 98-141
Transferee,)	
)	
For Consent to Transfer Control of Corporations)	ASD 01-17
Holding Commission Licenses and Lines)	
Pursuant to Sections 214 and 310(d) of the)	
Communications Act and Parts 5, 22, 25, 63,)	
90, 95 and 101 of the Commission's Rules)	

**COMMENTS OF
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), through counsel and pursuant to the Commission's February 22, 2001 request for comments in the above-captioned proceeding,¹ hereby submits these comments concerning SBC Communications, Inc.'s ("SBC's") proposal to disaggregate its Coordinated Integration Application ("CIA") Centrex offering from its other services for purposes of compliance with certain performance requirements adopted in the SBC/Ameritech merger order.²

¹ Common Carrier Bureau Seeks Comment on Proposed Change to SBC's Performance Measurements, Public Notice, DA 01-332 (released Feb. 22, 2001) ("Public Notice").

² Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, Memorandum Opinion and Order, FCC 99-279 (rel. Oct. 8, 1999) ("SBC/Ameritech Merger Order" or "Merger Order").

I. INTRODUCTION AND SUMMARY

In considering SBC's request to disaggregate CIA Centrex for purposes of certain performance requirements adopted in the Merger Order, McLeodUSA urges the Commission to bear in mind that the performance requirements are critically important tools for protecting the public interest from the anti-competitive harms resulting from the SBC/Ameritech merger. In granting conditional approval of the merger, the Commission specifically concluded that the merger posed significant potential public interest harms by:

- (a) removing one of the most significant potential participants in local telecommunications mass markets both within and outside of each company's region;
- (b) eliminating an independent source for effective, minimally-intrusive comparative practices analyses among the few remaining major incumbent LECs as the Commission implements and enforces the 1996 Act's market-opening requirements; and
- (c) increasing the incentive and ability of the merged entity to discriminate against rivals, particularly with respect to advanced services.³

The Commission further concluded that the above harms were not mitigated by the potential benefits of the merger.⁴ In light of these harms, the Commission would not have approved the merger had it not found that the merger conditions (a central component of which is the carrier-to-carrier performance plan) were enough to tip the scale in favor of granting the application.⁵

Rather than adopt the full panoply of performance requirements recommended by CLECs, the Commission adopted only those that the Commission concluded the most critical; i.e., those that "may have a direct and immediate impact upon a CLEC's end user customer."⁶ The carrier-to-carrier performance requirements were intended to serve as a "direct economic

³ Merger Order at ¶ 348.

⁴ *Id.* at ¶ 348.

⁵ *Id.* at ¶ 349.

⁶ *Id.*, Appendix C, Attachment A at A-2.

incentive for SBC/Ameritech to cure performance problems quickly.”⁷ Thus, any erosion of these requirements would invite SBC to take advantage of its “increased incentive and ability to discriminate against rivals following the merger . . .,”⁸ which would ultimately harm competition and deny consumers the benefits of a competitive marketplace.

This heightened incentive and ability of SBC to discriminate against its competitors applies to the market for Centrex services. Ameritech has achieved dominance in this market as a result of its historical status as the incumbent LEC. In fact, SBC’s merger application indicates that it considered Ameritech an “industry leader” in Centrex, and that Centrex would be a principal component of services from which SBC expected to generate \$120 million in revenue growth.⁹ In light of Ameritech’s dominant position and its incentive and ability to discriminate against its competitors, CLECs such as McLeodUSA depend on the Commission to strictly enforce the performance requirements adopted in the Merger Order.

McLeodUSA generally agrees that CIA Centrex should be disaggregated for purposes of the Commission’s performance requirements, provided that disaggregation is implemented in a manner that maintains or strengthens the requirements as applied to CIA Centrex. In this regard, SBC’s proposal is inadequate and should be modified in several respects as recommended by McLeodUSA. Specifically: 1) CIA Centrex should be disaggregated with respect to all appropriate performance measures rather than only FCC Performance Measure #6a as proposed by SBC; 2) adequate benchmark intervals should be adopted for both non-field work and field work installations under FCC Performance Measure #6a; and 3) McLeodUSA would not object to an exclusion for customer due dates falling outside the benchmark interval under FCC

⁷ Merger Order at ¶ 432.

⁸ *Id.* at ¶ 432.

⁹ *Merger of SBC Communications Inc. and Ameritech Corporation*, Description of the Transaction, Public Interest Showing and Related Demonstrations, Kaplan Affidavit at 8 (filed July 24, 1998).

Performance Measure #6a if adequate benchmarks are adopted. By adopting McLeodUSA's recommendations, the Commission can ensure that disaggregation of CIA Centrex does not diminish or eliminate performance requirements for these vital services.

Finally, McLeodUSA notes that SBC's filing reflects several changes that SBC did not describe or demonstrate a need for. These additional changes should not be adopted without further explanation by Ameritech and an opportunity for comments as appropriate.

II. THE COMMISSION SHOULD DISAGGREGATE CIA CENTREX IN THE MANNER RECOMMENDED BY MCLEODUSA

McLeodUSA generally agrees that CIA Centrex should be disaggregated from the overall Business POTS category for purposes of the performance requirements adopted by the Merger Order. Disaggregation of CIA Centrex will help ensure that SBC is held accountable not only for deficiencies in its provision of wholesale Business POTS generally, but also for those deficiencies that particularly affect McLeodUSA and other carriers who may elect to use CIA Centrex to serve their customers. Disaggregation of CIA Centrex, however, must be implemented carefully to avoid undesirable results. The objective of disaggregation should be to maintain or strengthen the performance requirements as applied to CIA Centrex. If disaggregation is not implemented properly, it may result in CIA Centrex not being subject to the performance requirements, either in part or altogether. Such a result would not only encourage discriminatory behavior in SBC's provision of CIA Centrex, but it would also artificially improve SBC's reported performance for the overall Business POTS category from which CIA Centrex is disaggregated.

In light of the above objective, SBC's proposal to disaggregate CIA Centrex is inadequate for the reasons described below. McLeodUSA proposes modifications that the

Commission should adopt to ensure that any disaggregation of CIA Centrex is consistent with the non-discriminatory purposes of the performance requirements.

A. CIA Centrex Should Be Disaggregated With Respect to All Appropriate Performance Measures

As an initial matter, SBC has requested disaggregation of CIA Centrex with respect to only one of the four performance measures for which disaggregation is appropriate. SBC and McLeodUSA, among other carriers, have agreed to performance requirements that include disaggregation of CIA Centrex in several Ameritech region states.¹⁰ The Interim Agreement included disaggregation of CIA Centrex with respect to the following performance measures:

- 1) Percent Firm Order Confirmations (FOCs) Returned Within "X" Hours (Illinois Performance Measure #5, which compares to FCC Performance Measure #1);
- 2) Average Time to Return FOC (Illinois Performance Measure #6, for which there is currently no comparable FCC Performance Measure);
- 3) Mean Installation Interval – POTS (Illinois Performance Measure #27, which compares to FCC Performance Measure 6a);
- 4) Percent Installations Completed within "X" Business Days (Illinois Performance Measure #28, comparable to FCC Measurement 6c which currently applies only to UNEs).¹¹

Despite these additional requirements with respect to which the parties agreed to disaggregate CIA Centrex, SBC requests disaggregation of CIA Centrex at the federal level only with respect to Mean Installation Interval – POTS (FCC Performance Measure 6a). While disaggregation

¹⁰ Attached hereto is a petition that reflects the disaggregation of CIA Centrex to which McLeodUSA and Ameritech, among other carriers, agreed on an interim basis. *Petition for Resolution of Disputed Issues Pursuant to Condition (30) of the SBC/Ameritech Merger Order*, Joint Petition, Docket No. 01-0120 (filed Feb. 5, 2001) ("the Interim Agreement."). As discussed below, the parties agreed that these performance measures were interim measures that would be reviewed in the first quarter of 2001 and modified as appropriate. Please note that Performance Measure #27 in the attachment to the Interim Agreement incorrectly contains a parity standard for both field work and non-field work CIA Centrex installations. As SBC indicated in background materials provided to the Commission, SBC and McLeodUSA agreed to a four business day interval for non-field work installations. McLeodUSA believes that the omission of a four business day interval for non-field work installations in the Interim Agreement was a clerical oversight that will be corrected since it does not reflect the parties' documented understanding as to this interval.

¹¹ Interim Agreement, attached disaggregation schedule at 1-3.

with respect to that interval is important, McLeodUSA believes that the full scope of disaggregation on which the parties agreed at the state level will more effectively ensure nondiscriminatory provisioning of CIA Centrex service. Accordingly, McLeodUSA recommends that the Commission disaggregate CIA Centrex under its performance requirements (with appropriate modifications) to the same degree that the parties have agreed to disaggregate CIA Centrex for purposes of performance requirements at the state level. McLeodUSA is willing to participate in any collaborative discussions that may be necessary for the Commission to disaggregate CIA Centrex in this manner. At minimum, the Commission should disaggregate CIA Centrex with respect to “Percent FOCs Returned Within ‘X’ Hours” (in addition to disaggregation of FCC Performance Measure #6a) since a comparable performance measure (FCC Performance Measure #1) already exists at the federal level.

In adopting any disaggregation of CIA Centrex, the Commission should ensure that the existing requirements for SBC to make voluntary payments for sub-benchmark performance carry forward to the disaggregated measurements. Specifically, the Commission should specify that disaggregated measurements applicable to CIA Centrex constitute “disaggregated sub-measurements” within the meaning of the voluntary payment requirements set forth in the Merger Order.¹² Also, the Commission’s reason for requiring treble payments for certain “low volume” resold services applies particularly to the relatively isolated market for CIA Centrex services. Accordingly, McLeodUSA recommends that the Commission specify that disaggregated sub-measurements applicable to CIA Centrex constitute “qualifying sub-measurements” within the meaning of the voluntary payment requirements set forth in Merger

¹² See Merger Order, Appendix C, Attachment A at A-3 n.61.

Order.¹³ With these specifications, disaggregation of CIA Centrex will maintain or strengthen the existing performance requirements rather than erode them.

B. SBC's Proposed Disaggregation of FCC Performance Measure #6a Should Be Modified.

For the reasons discussed above, disaggregation of CIA Centrex should not be limited to FCC Performance Measure #6a, but rather should include all appropriate measures on which the parties have previously agreed on an interim basis. McLeodUSA is willing to participate in collaborative discussions as necessary to achieve such disaggregation. Since SBC's Request included a specific proposal for disaggregation of CIA Centrex for purposes of FCC Performance Measure #6a, McLeodUSA addresses the deficiencies in SBC's proposal and recommends modifications below.

1. The Commission Should Adopt a Three Business Day Interval for Non-Field Work Orders Under FCC Performance Measure #6a.

SBC proposes a four business day benchmark interval for non-field work installations under FCC Performance Measure #6a. SBC, however, does not demonstrate that a four business day interval (as opposed to a shorter interval) is reasonable for these installations. An appropriate interval for non-field work installations is particularly important to McLeodUSA because these installations comprise the majority of McLeodUSA's CIA Centrex orders. McLeodUSA believes that a shorter interval, such as three business days, may be more appropriate for these installations.

SBC points out in background materials provided to the Commission that McLeodUSA has previously agreed to a four business day interval for non-field work installations. McLeodUSA agreed to that interval, however, on the condition that it was an *interim* interval that the parties would review in the first quarter of 2001 and renegotiate if changes were needed

¹³ *Id.* at A-4 n.64.

as contemplated in the Interim Agreement.¹⁴ The first quarter 2001 review has not yet occurred and, as noted above, McLeodUSA believes that a shorter interval for non-field work installations may be appropriate. If the parties had viewed the four business day interval as a permanent interval (and one that would also be determinative of the FCC's interval), McLeodUSA would not have agreed to it and would likely have sought a shorter interval through more vigorous negotiations and/or litigation.

In light of these circumstances, the Commission should not simply adopt the interim four business day interval in lieu of making its own reasoned decision on an appropriate interval for FCC Performance Measure #6a in this proceeding. McLeodUSA recommends that the Commission adopt a three business day interval for non-field work installations. If necessary, the Commission could adopt a three business day interval on an interim basis pending the parties' review of the agreed interim interval as contemplated by the parties' agreement.

2. The Commission Should Adopt a Benchmark Interval of Four Business Days for Field Work Installations Under FCC Performance Measure #6a.

SBC proposes a benchmark interval only for non-field work CIA Centrex installations, while field work installations would remain under a parity requirement. SBC does not demonstrate why two types of standards should apply to the same service, depending solely on whether field work (e.g., work at the customer premises) is required for the installation. As SBC's Request explains, the reason for disaggregating CIA Centrex is that it requires central office work that is not normally required for a resale order. Thus, a parity standard is not appropriate for CIA Centrex installations and a benchmark interval must be applied. It does not stand to reason that a parity standard would become applicable simply because an installation also requires field work. Applying dual standards in this manner may result in inconsistent

¹⁴ Interim Agreement at 2, ¶ 2.

application of the parity and benchmark intervals. At worst, dual standards could invite gaming behavior by SBC in order to take advantage of the standard that yields the most favorable performance reporting results.

In light of the above, McLeodUSA recommends that the Commission adopt a benchmark standard for both non-field work and field work CIA Centrex installations. The benchmark for non-field work installations should be three business days as discussed above. McLeodUSA recommends a benchmark of four business days for field work installations. As in the case of non-field work installations, the field work installation interval could be adjusted if necessary after McLeodUSA and SBC have completed their review of the existing interim standard as contemplated by the parties' agreement.

3. McLeodUSA Does Not Object to An Exclusion for Installations With a Customer-Requested Due Date of Greater than Five Business Days Provided CIA Centrex is Disaggregated as Recommended by McLeodUSA in Other Respects.

SBC proposes to revise FCC Performance Measure #6a to exclude non-field work installations where a customer requests a due date greater than five business days. McLeodUSA agrees that if non-field work installations are subject to a benchmark interval, then SBC should not be penalized for meeting customer requested due dates falling outside that interval. Thus, if non-field work installations of CIA Centrex are disaggregated and subject to a benchmark as proposed by McLeodUSA, then a corresponding exclusion such as the one proposed by SBC would be appropriate. Similarly, if field work installations are subject to a benchmark interval as proposed by McLeodUSA above, then it would be appropriate to adopt a corresponding exclusion for these installations.

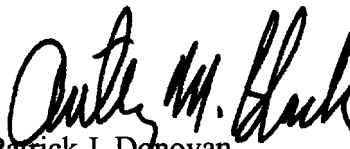
III. SBC HAS NOT DESCRIBED OR DEMONSTRATED A NEED FOR ADDITIONAL CHANGES SHOWN IN THE ATTACHMENT TO ITS REQUEST

SBC attached to its Request a red-lined version of FCC Performance Measure #6a showing SBC's proposed changes. The redline includes the disaggregation of CIA Centrex in the two respects described in the Notice, as well as other changes that appear unrelated to such disaggregation.¹⁵ SBC did not describe or explain why it proposes these additional changes, nor are its reasons readily apparent. These additional changes should not be adopted without full consideration of their impact on SBC's performance obligations. McLeodUSA therefore recommends that the Commission reject these additional changes and allow SBC an opportunity to file information to support them, with an opportunity for McLeodUSA and other interested parties to file further comments in response to any SBC filing.

IV. CONCLUSION

For the foregoing reasons, McLeodUSA urges the Commission to disaggregate CIA Centrex in the manner recommended by McLeodUSA for purposes of enforcing the performance requirements adopted in the Merger Order.

Respectfully submitted,



Patrick J. Donovan
Anthony M. Black
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500
Counsel for McLeodUSA Telecommunications
Services, Inc.

March 8, 2001

¹⁵ The additional changes include 1) exclusion from FCC Performance Measurement #6a of "Orders where CLECs are charged expedite charges . . .," 2) a change in the exclusion for Field Work orders under FCC Performance Measure #6a, 3) a change in the business rules (i.e., substitution of "closed" for "completion"), and 4) changes in the Levels of Disaggregation (in addition to the proposed CIA Centrex disaggregation).

**OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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CHIEF CLERK'S OFFICE

Petition for Resolution of
Disputed Issues Pursuant to
Condition (30) of the
SBC/Ameritech Merger Order

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01-0120

JOINT PETITION

Pursuant to the Commission's Orders of September 23, 1999, November 15, 1999, and November 23, 1999, Illinois Bell Telephone Company ("Ameritech Illinois"), along with AT&T Communications of Illinois, Inc. ("AT&T"); TCG Illinois, TCG Chicago, TCG St. Louis, CoreComm Illinois, Inc.. ("CoreComm"); WorldCom, Inc. ("WorldCom"); McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"); XO Illinois, Inc. ("XO"); Northpoint Communications, Inc. ("NorthPoint"); Rhythms Netconnections and Rhythms Links, Inc. ("Rhythms"); Sprint Communications L.P. ("Sprint"); Focal Communications Corporation of Illinois ("Focal"); and Gabriel Communications of Illinois, Inc. (collectively "CLECs"), respectfully request that the Commission resolve certain disputed issues arising out of the collaborative process required by Condition (30) of the SBC/Ameritech Merger Order (Docket 98-0555). In support of their joint submission, the parties state as follows:

1. Pursuant to Condition (30) of the SBC/Ameritech Merger Order, Ameritech Illinois, Staff and interested CLECs have been engaged in a collaborative process addressing performance measures, benchmarks and liquidated damages commitments. The parties participating in the Illinois collaborative have met 10 times covering 19 days and held 5 conference calls over a period of 10 months. In the course of these meetings, the parties have made significant progress in developing performance measurements that address specific areas of CLEC concern. Ameritech Illinois has agreed to add 38 new measurements, which disaggregate into 279 additional submeasures. Ameritech Illinois has also agreed to modify 70 existing measurements, adding 160 additional submeasures. It has modified basic business rules for 22 measurements. In addition, CLECs and Ameritech Illinois have agreed to remove 9 of the original Texas measurements.

2. At this juncture, there are no performance measurements which are still in dispute between Ameritech Illinois and the CLECs. Ameritech Illinois and the CLECs have agreed to a quarterly status meeting during March, when they will discuss progress to date as well as set the groundwork for the six-month review meeting to be scheduled for June 2001. Separately, Ameritech Illinois will be filing revised tariff pages implementing these agreed-upon performance measurements. A list of the agreed upon performance measures and applicable standards is attached as Appendix A.

3. There are two areas in which Ameritech Illinois and the CLECs are not in agreement. First, the parties disagree as to the appropriate remedies. Ameritech Illinois believes that the Texas Remedy Plan should be implemented, as has been done in accordance with the Company's commitment in the SBC/Ameritech merger proceeding. The CLECs have sponsored the Joint CLEC Remedy Plan, which they argue should be adopted by the Commission.¹ Second, the Joint CLEC Remedy Plan recommends that remedies be triggered if Ameritech Illinois' wholesale performance, while at parity with retail performance standards, still is below state-mandated performance benchmarks. Ameritech Illinois does not support this proposal.

4. The Joint Petitioners request that a proceeding be initiated addressing the above-described issues, so that they can be resolved by the Commission.

WHEREFORE, in view of the foregoing, the Petitioners request that a proceeding be initiated to resolve the issues outlined in this Joint Petition.

Respectfully submitted,

¹ Sprint introduced a separate remedy plan in the collaborative discussions that it may or may not introduce in this proceeding.

By: Louise A. Sunderland

Louise A. Sunderland

As Authorized By:
AMERITECH ILLINOIS

Date: 1/24/01

STATE OF ILLINOIS

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SS

COUNTY OF COOK

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VERIFICATION

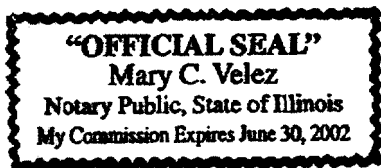
I, Louise A. Sunderland, on oath state that I represent Ameritech Illinois, that I have read the foregoing Joint Petition, and that the information contained therein is true and correct to the best of my knowledge and belief.

Louise A. Sunderland

Subscribed and Sworn to
Before me this 24 day of
January, 2001.

Mary C. Velez
Notary Public

My Commission Expires: June 30, 2002



By: Doug Trabari
(signature)

Douglas W. Trabari
(printed or typed name)

As Authorized By:
AT & T COMMUNICATIONS, INC.

Date: 1/11/01

STATE OF ILLINOIS

COUNTY OF COOK

)
) SS
)

VERIFICATION

I, Douglas W. Treban, on oath state that I represent AT & T Communications of Illinois, Inc., that I have read the foregoing Joint Petition, and that the information contained therein is true and correct to the best of my knowledge and belief.

Douglas W. Treban

Subscribed and Sworn to
Before me this 12th day of
January, 2001.

Margaret M. Plucinsky
Notary Public

My Commission Expires: May 12, 2003



By: Doug Trabari
(signature)

Douglas W. Trabari
(printed or typed name)

As Authorized By:
TCG ILLINOIS, TCG, CHICAGO AND TCG ST. LOUIS

Date: 1 / 11 / 01

STATE OF ILLINOIS

COUNTY OF COOK

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) SS
)

VERIFICATION

I, Douglas W. Traboni on oath state that I represent TCG Illinois, TCG, Chicago and TCG St. Louis, that I have read the foregoing Joint Petition, and that the information contained therein is true and correct to the best of my knowledge and belief.

Doug Traboni

Subscribed and Sworn to
Before me this 12th day of
January, 2001.

Margaret M. Plucinsky
Notary Public

My Commission Expires: May 12, 2003



By: Thomas J. O'Brien
(signature)

Thomas J. O'Brien
(printed or typed name)
As Authorized By:
CORECOMM ILLINOIS, INC.

Date: 1-11-01

STATE OF OHIO

COUNTY OF FRANKLIN

)
) SS
)

VERIFICATION

I, Thomas J. O'Brien, on oath state that I represent CoreComm Illinois, Inc., that I have read the foregoing Joint Petition, and that the information contained therein is true and correct to the best of my knowledge and belief.

Thomas J. O'Brien

Subscribed and Sworn to
Before me this 11th day of
January, 2001.

[Signature]
Notary Public

My Commission Expires:



ERIC RAY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JUNE 20, 2001

By: Darrell Townsley
(signature)
DARRELL TOWNSLEY
(printed or typed name)

As Authorized By:
WORLDCOM, INC.

Date: 1/11/01

STATE OF ILLINOIS
COUNTY OF COOK

)
) SS
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VERIFICATION

I, DARRELL TOWNSLEY, on oath state that I represent WorldCom, Inc., that I have read the foregoing Joint Petition, and that the information contained therein is true and correct to the best of my knowledge and belief.

Darrell Townsley

Subscribed and Sworn to
Before me this 11 day of
January, 2001.

Pauline M. Kerkstra
Notary Public

My Commission Expires: 8/29/03



By: William A. Has
(signature)

William A. Has
(printed or typed name)

As Authorized By:
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

Date: 1/10/01